

Office of the Secretary, Interior

§4.478

and warranted. An appeal may be had from such order as well as from any other final determination made by the administrative law judge.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the administrative law judge to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses shall be subject to cross-examination by any party to the proceeding. The administrative law judge may question any witness whenever it appears necessary. Documentary evidence will be received by the administrative law judge and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the administrative law judge will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The administrative law judge shall summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same preference and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the administrative law judge proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(d) The reporter's fees will be borne by the Government. Each party must pay for any copies of the transcript that the party requests. The Govern-

ment will file the original transcript with the case record.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003, as amended at 75 FR 64669, Oct. 20, 2010]

§4.477 Findings and conclusions; decision by administrative law judge.

As promptly as possible after the time allowed for presenting proposed findings and conclusions, the administrative law judge will make findings of fact and conclusions of law, unless waiver has been stipulated, and will render a decision upon all issues of material fact and law presented on the record. In doing so, he or she may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. The reasons for the findings, conclusions, and decision made will be stated, and along with the findings, conclusions, and decision, will become a part of the record in any further appeal. A copy of the decision must be sent by certified mail to all the parties.

[75 FR 64669, Oct. 20, 2010]

§4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under §4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay in accordance with §4.411.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in §4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision